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IN THE

Supreme Court of the United States

October Term, 1956

No. 33

MICHAEL WILSON, *et al.*,

Petitioners,

vs.

LOEW'S INCORPORATED, a corporation, *et al.*,

Respondents.

Brief of American Civil Liberties Union, Southern California Branch Amicus Curiae in Support of Petition.

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SUBJECT INDEX

PAGE

Preliminary statement 1

I.

The refusal of the California courts to grant petitioners relief from respondents' blacklist constitutes state action, and therefore, unconstitutionally deprives petitioners of their liberty and property without due process of law and denies them the equal protection of the law 3

A.

The right to work is constitutionally protected by the Fourteenth Amendment 3

B.

A political blacklist is an unlawful conspiracy which deprives men of their constitutional rights and liberties 4

C.

The denial of relief by the California courts converts the unlawful conspiracy into state action 6

II.

The blacklist serves as an unconstitutional prior restraint on freedom of speech, press, and assembly 10

A.

The "crime" 12

B.

The "judges" 15

C.

Ordeal by letter 22

D.

The "punishment" 24

Conclusion 26

TABLE OF AUTHORITIES CITED

Cases	Page
Adler v. Board of Education, 342 U. S. 485	8
Barsky v. Board of Regents, 347 U. S. 442	4
Betts v. Easley, 161 Kans. 459, 169 P. 2d 831	7
Boyd v. United States, 116 U. S. 616	9
Christal v. Police Commission, 33 Cal App. 2d 564, 92 P. 2d 416	8
Collins v. Hardyman, 341 U. S. 651	3, 9
Emspak v. United States, 349 U. S. 190	5, 11
Garner v. Board of Public Works of Los Angeles, 341 U. S. 716	8
Hauger v. Gates, 42 Cal. 2d 752, 269 P. 2d 609	3
Hurd v. Hodge, 334 U. S. 24	9
Lane v. Wilson, 307 U. S. 268	9
Lawson v. United States, 339 U. S. 934	12
Loubriel v. United States, 9 F. 2d 807	9
Masters v. Lee, 39 Neb. 574, 58 N. W. 222	5
Mesarosh v. United States, No. 20, 25 LW 4001	6
Quinn v. United States, 349 U. S. 155	11
Shelley v. Kraemer, 334 U. S. 1	7
Slochower v. Board of Education, 350 U. S. 551	5
Smith v. Texas, 233 U. S. 630	4, 7
Smith v. Texas, 311 U. S. 128	7
Steele v. Louisville & Nashville R.R. Co., 323 U. S. 192	7
Steinmetz v. State Board of Education, 44 Cal. 2d 816, 285 P. 2d 617; cert. den., 351 U. S. 915	8
Takahashi v. Fish & Game Commission, 334 U. S. 410	7
Thomas v. Collins, 323 U. S. 516	9
Truax v. Raich, 239 U. S. 33	4, 5, 7, 9
Trumbo v. United States, 339 U. S. 934	12
United States v. Kamin, 135 F. Supp. 382	5

PAGE

United States v. Lamont, 236 F. 2d 312 5

Watkins v. United Sattes, 233 F. 2d 681; cert. granted, No. 261, 25 LW 3104 5

Weiman v. Updegraff, 344 U. S. 183 11

Williams v. United States, 341 U. S. 97 6

MISCELLANEOUS

4 Blackstone's Commentaries 327-328 (2 Jones' Ed., 1916, pp. 2559-60) 6

1 Cogley, Report on Blacklisting (1956) 5, 10, 11, 12, 13, 14, 15, 16, 17 18, 19, 20, 21, 22, 23, 24, 25

Frontier, May, 1954, The Hollywood Story, p. 6 10

Miller, The Judges and The Judged (1952, Doubleday & Co., Inc.) 8, 10, 13, 14, 18, 25

1 Philadelphia Theatre, September 22, 1956, The Nation, Courage in Action 10, 12

29 Southern California Law Review (1956), pp. 263, 278, Horowitz, Legal Aspects of Political Blacklisting 13

6 Stanford Law Review, Horowitz, Loyalty Tests for Employment in The Motion Picture Industry 10

STATUTE

United States Constitution, Fourteenth Amendment 6, 7

IN THE

Supreme Court of the United States

October Term, 1956

No. 552

MICHAEL WILSON, *et al.*,

Petitioners,

vs.

LOEW'S INCORPORATED, a corporation, *et al.*,

Respondents.

Brief Amicus Curiae in Behalf of Petitioners by American Civil Liberties Union, Southern California Branch.

Preliminary Statement.

The American Civil Liberties Union is a national organization which defends the civil liberties of everybody, even those whose anti-democratic opinions it abhors and opposes; but which, because that is its function, bars from its governing bodies and staff all who hold such anti-democratic beliefs, whether Communist, or Fascist, as well as all adherents to all totalitarian doctrines.

The ACLU has long recognized the right and duty of a free nation to maintain its security by eliminating or excluding from positions closely affecting security persons who constitute a substantial risk of subversive action. But any such designation either of persons or positions, should be the exclusive function of the security agencies of the executive branch of government. In all other positions in a free society, employment should be decided

on the basis of qualifications strictly relevant to the particular task involved. We do not, in humane and civilized America, kill or jail or force on relief even those whom we regard as too untrustworthy to occupy positions close to the nation's security. Hence, the only remaining possibility is to let them work in other positions, according to their qualifications. This is a hard doctrine in a time of international tension, but it is not only indispensable to a free society, but made the more urgent by the struggle for men's minds through demonstrating our sincerity.

Members of the public who object to a performer for whatever reason may, within the spirit, as well as the letter of the Constitution, express their disappproval in several ways, for example, by peaceful picketing, or by publication—within the laws of libel or slander—of derogatory information. When when they suppress or censor a performer not unacceptable to others, they then violate the ideal of the First Amendment, and the notion that differences of opinion may be handled by argument, rather than suppression. Particularly is this true where—as in the case at bar—censorship and suppression is undertaken without even the most rudimentary safeguard of due process.

Here, as everywhere in a free society, there is a choice of risks. The best solution is that which promises the greatest balance of benefit over harm for the whole society. The ever increasing attempts of pressure groups to bring about the censorship or suppression of that of which they disapprove, are dangerously undermining the foundation stones of American democracy, the freedom of expression. For these reasons, the ACLU, Southern California Branch, respectfully appears as *amicus curiae* in support of the Petition for Certiorari.

I.

The Refusal of the California Courts to Grant Petitioners Relief From Respondents' Blacklist Constitutes State Action, and Therefore, Unconstitutionally Deprives Petitioners of Their Liberty and Property Without Due Process of Law and Denies Them the Equal Protection of the Law.

A.

The Right to Work Is Constitutionally Protected by the Fourteenth Amendment.

Prior to the filing of the action at bar, each petitioner had been regularly employed in the motion picture industry anywhere from 5 to 25 years;[1] but respondents, *representing the entire industry*,[1a] agreed among themselves to exclude petitioners from further employment therein solely because each had asserted his constitutional rights in declining to testify before a Congressional investigating committee.[2]

Amicus believes that the failure of the California courts to afford petitioners relief from said conspiracy was equivalent to state action, and thus poses serious constitutional questions which, it is respectfully urged, this Court should review. To these issues *Amicus* now addresses itself as follows:

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[1]See Record at Bar, pp. 66, 75, 77-78, 80-82, 84-85, 87-89, 91-92, 94-96, 98-99, 101-102, 104-105.

[1a]Except of course the respondent members of, and investigator for, The House Committee on Un-American Activities named in complaint at bar. See Record, pp. 66-71.

[2]See complaint herein [R. 65, *et seq.*]. Respondents interposed a demurrer thereto, so that properly pleaded allegations therein are deemed true. *Collins v. Hardyman*, 341 U. S. 651, 652; *Hauger v. Gates*, 42 Cal. 2d 752, 755, 269 P. 2d 609, 610.

The respondents at bar offered petitioners a choice: either surrender of their federal privileges and immunities, or else no further employment. A man must work to feed, house and clothe himself and his family.[3] An election between survival and liberty, therefore, reduces the Constitution to empty platitudes, for neither dead men nor robots need constitutions. The right to work is a human right, a personal right, a Constitutional right (*Truax v. Raich*, 239 U. S. 33, 41; *Smith v. Texas*, 233 U. S. 630, 636), and the opportunity to earn a living cannot be unjustly withheld from a man without doing violence to the Constitutional guarantees protecting his life, liberty and property, and assuring him of equal protection of the law (*Smith v. Texas, supra*, p. 641; *Truax v. Raich, supra*, p. 41; Cf. Mr. Justice Douglas, dissenting in *Barsky v. Board of Regents*, 347 U. S. 442, 472). A jobless man soon becomes a hungry man—and to palliate hunger, men have relinquished their liberty, or else have stolen it from others.

B.

A Political Blacklist Is an Unlawful Conspiracy Which Deprives Men of Their Constitutional Rights and Liberties.

This is not to deny the undoubted right of a private employer to hire and fire for whatever reason (subject to contractual or legislative restraints) he sees fit. But that is not the case here because each respondent, upon joining in the conspiracy, waived his right to exercise his

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[3]See: Mr. Justice Douglas, dissenting in *Barsky v. Board of Regents*, 347 U. S. 442, at p. 472.

own unfettered judgment, and thereafter submitted his individual prerogatives to the collective discretion of the group.

> "The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others." (*Truax v. Raich, supra*, p. 38; *Masters v. Lee*, 39 Neb. 574, 586, 58 N. W. 222, 226.)

The frank objective of such conspiracy is to deny employment opportunity in the motion picture industry,[4] to such persons as have (properly) exercised their constitutional rights before investigating committees.[5] The conspirators do not pause to see whether a petitioner herein is held in contempt of Congress or convicted of perjury, nor do they seem to doubt (as the witness reasonably might)[6] the lawfulness and propriety of the investigating committee and its questions. Rather respondents' action is akin to frontier law; they draw their own (but erroneous)[7] inferences from petitioners' assertion of the Self-Incrimination Clause, and without affording any of them an opportunity to be heard, agree to cut petitioners off from further employment in the industry. In short, respondents have used their industrial power to blackmail

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[4]See the so-called WALDORF statement which defendant motion picture employers issued in 1947. John Cogley, *Report on Blacklisting* (1956), Vol. I, pp. 22-23.

[5]Cogley, *Report on Blacklisting*, Vol. I, *supra*, pp. 95-109.

[6]*Watkins v. United States* (CCA DC), 233 F. 2d 681, 688; cert. granted, No. 261, 25 LW 3104 (10-8-56); *United States v. Kamin* (DC Mass., 1955), 135 F. Supp. 382, 389; *United States v. Lamont* (CCA 2, 1956), 236 F. 2d 312.

[7]*Slochower v. Board of Education*, 350 U. S. 551, 557; *Emspak v. United States*, 349 U. S. 190, 195.

petitioners into forfeiting their constitutionally protected rights.

Our constitutional forefathers, however, rejected the barbaric practice of *peine forte et dure*, whereby a plea was extracted from an accused who stood mute by placing great weight of iron upon his stomach.[8] The admitted actions of the defendants at bar differ only in technique.

Moreover, this is a government of laws, not of mobs. As this Court recently pointed out: "The government of a strong and free nation does not need convictions based upon [perjured] testimony. It cannot abide with them." (*Mesarosh v. United States* (No. 20, Nov. 5, 1956), ... U. S. ....., 25 LW 4001, 4004-4005). Neither does this country need "convictions" wrung from false inferences by kangaroo courts (*Williams v. United States*, 341 U. S. 97, 101). If petitioners deserve punishment for their beliefs, associations—or silence—it is for a legally constituted court, not a private group of individuals, to impose it. For when it is otherwise, then the evils depicted under Point II of this brief infest our way of life, destroy our democratic system, and trample upon those freedoms already acquired at precious cost. *Amicus* respectfully submits, therefore, that the objective and methods of the conspiracy and hence the conspiracy itself, are unlawful.

C.

The Denial of Relief by the California Courts Converts the Unlawful Conspiracy Into State Action.

The Fourteenth Amendment prohibits the State from depriving its residents of life, liberty or property without due process of law, or denying those within its borders the

[8] 4 Bl. Comm. 327-328, (2 Jones Ed., 1916, p. 2559-60).

equal protection of the laws. Accordingly, a state may not sit idly by while men lose their liberty in the competitive struggle for economic security.[9] By denying petitioners relief, the court lends the enforcement machinery of government to perpetuation of the unlawful purposes as well as the iniquities of the conspiracy. It was rather the obligation of the California courts to reopen the gates of opportunity to petitioners not to put a lock thereon, and throw away the key. (Compare: *Shelley v. Kraemer*, 334 U. S. 1.)

If the Fourteenth Amendment be given meaningful content, then the injunction against arbitrary state action must be read as a command to the state to protect its inhabitants from such unlawful conduct by others—especially when it is asked to do so.

> "The Fourteenth Amendment requires that equal protection to all must be given—not merely promised" (*Smith v. Texas*, 311 U. S. 128, 130).

Manifestly, it is no answer that petitioners failed to allege an existing contractual relationship with defendants since, under the circumstances none could exist. Nor need there be in such a case as this, for we have but to unbutton the specious rationale of that argument "to discover beneath [it] the very negation of all the ideals of the equal protection clause."[10]

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[9] *Smith v. Texas, supra*, p. 636; *Truax v. Raich, supra*, p. 39; *Takahashi v. Fish & Game Commission*, 334 U. S. 410, 420; Compare: *Steele v. Louisville & Nashville R.R. Co.*, 323 U. S. 192; *Betts v. Easley*, 161 Kansas 459, 467, 169 P. 2d 831, 843.

[10] Concurring language of Mr. Justice Murphy in *Takahashi v. Fish & Game Commission*, 334 U. S. 410, at p. 427.

For one thing, this Court,[11] as well as the California courts,[12] has upheld the discharge of public employees who assert their constitutional rights before government bodies, on the ground that public employment is a privilege. Such public employee, it is said, has the alternative of going into private industry.[13] The studies on blacklisting in the entertainment field demonstrate, therefore, that the California decision at bar, if left standing, will tend to starve petitioners.[14]

Moreover, these petitioners have devoted many years of their lives as employees of one or more of the respondents.[15] Each petitioner has been dependent upon the industry for his (or her) livelihood. On the other hand, respondents[16] own and dominate the motion picture industry, and thereby control its employment policies and practices.[17] An agreement among them to exclude petitioners from the industry becomes, then, a conspiracy "of

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[11]*Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716, 721; *Adler v. Board of Education*, 342 U. S. 485, 492.

[12]*Steinmetz v. State Board of Education* (1955), 44 C. 2d 816, 824; 285 P. 2d 617, 621; cert. denied (351 U. S. 915); *Christal v. Police Commission*, 33 Cal. App. 2d 564, 569; 92 P. 2d 416, 419-420.

[13]See: *Adler v. Board of Education*, 342 U. S. 485, 492.

[14]John Cogley, *Report on Blacklisting*, Vol. I (Movies) and Vol. II (Radio-Television), published by the Fund For The Republic, Inc.; Merle Miller, *The Judges and The Judged* (1952, Doubleday & Co., Inc.).

[15]Again, with exception of Respondents indicated by footnote 1a, *supra*.

[16]See footnote 1, *supra*.

[17]The allegations [R. 67-71] having been admitted. See footnote 2, *supra*.

such magnitude and effect as to work a deprivation of equal protection of the laws, or of equal privileges and immunities under the laws" (*Collins v. Hardyman*, 341 U. S. 651, 662).

Such illegal and unconstitutional practices invariably tiptoe their way into the law by too close adherence to form. (*Boyd v. United States*, 116 U. S. 616, 635; *Lane v. Wilson*, 307 U. S. 268, 275; *Thomas v. Collins*, 323 U. S. 516, 543.) But it is not only that it is "the duty of the courts to be watchful for then civil liberties of a citizen (*Boyd v. United States*, *supra*, p. 635). As Judge Learned Hand once put it:

> "The question is no less than whether courts must put up with shifts and subterfuges in the place of truth and are powerless to put an end to trifling. They would prove themselves incapable of dealing with actualities if it were so, for there is no surer sign of a feeble and fumbling law than timidity in penetrating the form to the substance." (*Loubriel v. United States* (CCA 2, 1926), 9 F. 2d 807, 808.)

Petitioners have requested an injunction to restrain respondents from continuing their conspiracy. "Equity is rooted in conscience" (Justice Frankfurter, concurring in *Hurd v. Hodge*, 334 U. S. 24, 36); so that while "an injunction is . . . 'an extraordinary remedial process'" resting in sound judicial discretion, to refuse to exercise such discretion where, as here, fundamental personal rights are at stake, is not conscionable (*cf.* Mr. Justice Frankfurter opinion in *Hurd v. Hodge*, *supra*; *Truax v. Raich*, *supra*, p. 39).

II.

The Blacklist Serves as an Unconstitutional Prior Restraint on Freedom of Speech, Press, and Assembly.

In October, 1947, the House Committee on Un-American Activities held a two-week long hearing on the subject of Communism in Hollywood.[18] Since conclusion of those proceedings, there had been persistent rumors, supported by numerous articles in magazines and other publications,[19] of political blacklists in the entertainment industry. If these reports were true, then the influence of such lists upon mass-communication industries like moving pictures, radio and television would have serious and even dangerous potentialities. Consequently, several independent studies of blacklisting in the motion picture and radio-television industries were conducted to determine whether these complaints had a factual foundation, and if so, to what extent, how such lists were used, who they affected and why. Among the first of such studies was one undertaken by the journalist, Merle Miller, for the American Civil Liberties Union. His report on blacklisting in radio and television was published in 1952 in a book entitled *The Judges and The Judged*.[20] In 1956, the results of a similar inquiry into blacklisting in the motion picture and radio-television fields was published under the auspices of the Fund For The Republic as a

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[18]John Cogley, *Report on Blacklisting*, Vol. I (Movies), 1956 at p. 1.

[19]Among them: *Frontier*, May, 1954: "The Hollywood Story", p. 6; Harold W. Horowitz, "Loyalty Tests For Employment in The Motion Picture Industry", 6 Stanford L.R. 438 (and articles cited under asterisk); The Nation, "Courage In Action: I Philadelphia Theatre," September 22, 1956.

[20]Published by Doubleday & Co. (1952), and referred to hereinafter as the Miller Report.

two-volume report.[21] This study was conducted, prepared and written under the direction of John Cogley, former executive editor of the Catholic publication, *Commonweal.*

These studies reveal that irrespective of the motives for such conspiracies, political blacklists reduce the most courageous voices to whispers, evoke abject recantations from dissenters, and silence indefinitely the timid.

Moreover, the blacklist is, in truth, political blackmail—invidiously thriving on the demands of the stomach. It incorporates all the features of a trial—but a trial likened to those of the Inquisition, the Star Chamber and Salem. There is, of course, the "crime" and an "accused". Next there is the "trial" itself, which would be more accurately characterized as the "ordeal". Then, there are the "judges", the "clearance" men, who weigh the "evidence", and mete out "punishment".

This Court recently had occasion to warn of such a conspiracy as the case at bar (*Emspak v. United States*, 349 U. S. 190, 195; *Quinn v. United States*, 349 U. S. 155, 164. Indeed in *Wieman v. Updegraff*, 344 U. S. 183, 190, 191, this Court condemned the application by a state of a blacklist published by the Attorney General.

Because petitioners are victims of a blacklist, it is the purpose of this portion of the brief to review its application as reported in the aforementioned studies, demonstrating thereby, its unconstitutionality as a prior restraint upon the liberties of not just petitioners, but all of the listening, watching and reading public.

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[21] John Cogley, *"Report on Blacklisting"* (Fund for The Republic), 1956 (two volumes), referred to hereinafter as the Cogley Report. Such reference will be to Volume I of the study only, unless otherwise indicated.

A.

The "Crime."

The "crime" which assigns an individual to the blacklist has no definitive limits or standards. Indeed, one may have committed a "crime" without realizing it; so that an actor, for example, who had gone a long period without receiving a call from his studio, might conclude that he "was simply washed up."[22]

The "crimes" are as many and as varied as the accusers. Refusal to testify before an investigating committee on a claim of privilege means certain consignment to the blacklist.[23] Yet, Gale Sondergard, who had appeared in forty-five motion pictures, had earned one academy award, and had been nominated for another, found herself unemployed after her husband had declined to testify.[24]

Two of the ten Hollywood witnesses whose conviction for contempt of Congress (for having declined solely on "First Amendment grounds" to testify before the House Committee) was sustained on appeal filed a Petition for Certiorari in this Court.[25] The mere signing of an *amicus curiae* brief in support of said Petition was later deemed

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[22]Cogley Report, p. 127.

[23]*Id.*, p. 109. Roy Brewer boasted at a meeting of the Motion Picture Alliance in 1952 that "not one of the witnesses who 'hid behind the Fifth Amendment' in the previous year and a half of hearings had subsequently been offered employment in the film industry."

[24]Cogley Report, p. 80. Miss Sondergard is one of the petitioners herein. For a more recent and shocking application of the blacklist to her, see *The Nation*, "Courage In Action," September 22, 1956.

[25]*Lawson v. United States*, 339 U. S. 934 (cert. denied); *Trumbo v. United States*, 339 U. S. 934 (cert. denied).

a "crime".[26] One of such signatories was Anne Revere whose movie career, going back to 1940, has been distinguished by one academy award performance, and nomination for another. In the two years following her appearance on the *amicus* brief, she worked approximately thirty-one days.[27]

Another group of individuals who fell within the shadow of the blacklist were the more than two hundred members of an actors association which sponsored trade paper advertisements, captioned: "THE THOMAS-RANKIN COMMITTEE MUST GO!"[28]

Any person named as a Communist Party member, either past or present, became, *sua sponte*, blacklisted.[29] In fact, it was a "crime" to be mentioned at any legislative hearing as the member of any organization remotely suspected of Communist influence.[30]

But while a blacklisted individual might not know the real cause of his unemployment or experience great difficulty in discovering it, there are, nonetheless, "standard texts" which will provide him with a clue. The most useful source material, of course, are the Congressional, state and local legislative reports on Communism which have the advantages of being privileged.[31] One such report, compiled by the Dies committee in 1944 as the (in)-

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[26]Cogley Report, p. 79.

[27]*Id.*

[28]*Id.*, p. 78.

[29]*E.g. Id.*, p. 125; Miller Report, pp. 29-31, 100 *et seq.*

[30]*E.g.* Miller Report; Chapter 4; Cogley Report, p. 162.

[31]Miller Report, p. 127; see: Horowitz, "Legal Aspects of 'Political Blacklisting' In The Entertainment Industry," 29 Southern California L.R., pp. 263, 278, *et seq.* (1956).

famous "Appendix Nine", contains an index of some 22,000 names of persons an organizations allegedly associated in some way with Communism in the United States. This information was unverified, and is conceded by one of its compilers to contain the names of many who probably deserve no link with Communism or subversion. Yet, this indiscriminate catalogue is at the disposal of private individuals and groups, and remains as an "authority" relied upon by the "clearance" men.[32]

A publication known as "Red Channels" has served as the "bible" for the radio-television industry.[33] It contains 151 names[34] drawn from reports of the House and the California Committee on Un-American Activities, the Daily Worker (a Communist Party publication), and Counterattack.[35] The latter is a four page militantly anti-Communist, weekly "fact" sheet edited by the publishers of "Red Channels".[36] The information appearing in "Red Channels" was not verified, it having been thought unnecessary inasmuch as official government publications were privileged,[37] while the names printed in The Daily Worker were "presumably" checked before being printed therein.[38]

Some information is gathered a little more "informally", such as a list naming 300 persons compiled by the American Legion from "scattered public sources",

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[32]Cogley Report, p. 121, 129.

[33]Miller Report, Chapter 4, p. 98.

[34]*Id.*, pp. 30-31.

[35]*Id.*, p. 117 *et seq.*

[36]*Id.*, pp. 30, 98.

[37]*Id.*, pp. 126-127.

[38]*Id.*, p. 135.

and furnished to eight major motion picture studios with instructions to "check this material for any factual error and make such reports to us as you deem proper."[39] It is reported that upon the appearance of the list "Legion headquarters was swamped with requests for political 'clearances' from nervous Hollywood actors and writers."[40]

B.

The "Judges."

Membership in a proscribed organization, or such other political offense, did not necessarily result in life banishment from the industry. Fortunately, there were individuals and groups who recognize the fallibility of men, and who were able to "separate the liberal lambs from the Communist wolves."[41]

One of these was Roy Brewer, who until 1954, was West Coast representative of the most powerful trade union in the industry,[42] and chairman of the board of the militantly anti-Communist MPA.[43] It was he who made it possible for Edward Dmytryk to become the first ex-Communist to return to work.[44] Thereafter, other ex-Communists turned to Brewer for help, until ultimately no listee referred to him became employed without it.[45]

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[39]Cogley Report, pp. 125-126.

[40]*Id.*, p. 126.

[41]*Id.* p. 131.

[42]International Alliance of Theatrical Stage Employees (IATSE); see *id.* pp. 47-73.

[43]Motion Picture Alliance; Cogley Report, pp. 10-11, 82.

[44]*Id.*, pp. 83-84.

[45]See, for example, *Id.*, p. 146-149.

Brewer's "rehabilitation" program was a prerequisite for re-employment.[46] It required the ex-Communist (or other listee) to first make a detailed report to the F.B.I. He next contacted the House Committee[47] for the purpose of working out a public repentance. Thereafter:

> "The ex-Communist was expected to testify (which meant naming names in public session), denounce the Party at union meetings and, if he was prominent enough, make some kind of statement for the press, write an article for a magazine, or in some other way publicly express his new feelings about the Party."[48]

Another avenue of re-employment was provided through the law offices of the senior partner of a leading theatrical firm.[49] His role as a "clearance lawyer" began inauspiciously enough when four of his clients were served with subpoenas to appear before the House Committee. After several pre-hearing trips to Washington to discuss their cases with committee members, he advised his clients to testify fully. They did, and, as word began to spread that "the Committee tended to make the ordeal somewhat easier" for his clients, other subpoenaed studio employees came to the attorney for advice. He is said to have represented some fifty "subpoenees" before the House Committee, and an additional twenty-five blacklisted persons

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[46] *Id.*, pp. 85-86.

[47] On Un-American Activities.

[48] Cogley Report, p. 84.

[49] His name, though deleted here is mentioned in Cogley's Report, p. 85. It should be added that this attorney was already a wealthy man, and claims to have lost $50,000 in his service as a "clearance lawyer" (p. 88), fn. 1. On the other hand, the financial opportunities for one less scrupulous cannot escape notice.

[50] Cogley Report, p. 87.

who, though never Communists, had "front records" which necessitated satisfactory explanations to Brewer and others.[51]

The power and prestige enjoyed by the "judges" did not go unobserved by those without it. One organization, the "Wage Earners Committee" conducted an intensive picketing campaign of motion pictures whose content, producers, stars or playwright it deemed objectionable.[52] Furthermore, their publication, The "National Wage Earner" designated ninety-two current films "which employ commies and fellow travelers and certain subversive subject matter designed to defame America throughout the world."[53]

Subsequently, the executive director of the organization notified the movie studios that his group would stop picketing "if the Industry would make an honest, and resultantly effective policing of this medium. And this must include the immediate cessation of all pictures in which Americans are pictured as being intolerant and prejudiced against any so-called minority groups."[53a] Representatives of the group were good enough to offer themselves as consultants to the studios relative to the content of motion pictures and "the loyalty of artists considered for employment".[54]

Yet, because of their high degree of sensitivity to public opinion, the movie and radio-television industries prove extremely vulnerable to the slightest pressures. For ex-

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[51] *Id.*, p. 88.

[52] *Id.*, pp. 113-114.

[53] *Id.*, p. 114.

[53a] *Id.*, p. 114.

[54] *Id.*, p. 114.

ample, after her academy award performance in "Born Yesterday", Judy Holliday had become a valuable and lucrative "property" to her employers, Columbia Pictures. But in Washington, D.C., and in New York, members of the Catholic War Veterans picketed two of her films, and distributed leaflets describing her as "the darling of the Daily Worker".[55]

Columbia announced that it was satisfied that Miss Holiday was loyal, but the picketing continued. Then, the studio hired Ken Bierly, one time editor of the aforementioned anti-Communist weekly "Counterattack", to "clear up the confusion about Judy Holliday."[56] Thereafter, the picketing stopped, and "the protests against Judy Holliday and [Born Yesterday] soon died down."[57] Bierly is reported to have later explained:

> "You might put it . . . . that I had something to do with getting the facts, the true facts, to the right people."[58]

The American Legion was of even greater assistance to the motion picture studios. 1951 was a year which found Hollywood again under investigation by the House Committee.[59] Donald R. Wilson, who in October was elected National Commander of the Legion, had a few months earlier proposed that representatives of the Legion meet informally with leaders of the movie industry to confer on the problem of Communism in Hollywood.[60]

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[55] *Id.*, p. 115; Miller Report, pp. 147-148.

[56] Cogley Report, p. 115; Miller Report, p. 147.

[57] Miller Report, p. 148; Cogley Report, p. 115.

[58] Miller Report, p. 148.

[59] Cogley Report, p. 92 *et seq.*

[60] *Id.*, p. 118.

Even as he extended the offer, some Legion posts were engaged in picketing of movie theatres.[61] Industry executives, however, failed to send a message to the convention; and in December, 1951, there appeared in the American Legion Magazine an article entitled: "Did the Movies Really Clean House?"[62] Its author was J. B. Matthews (sometimes referred to as Mr. Anti-Communist), who, among other things, is reputed to have assisted in the preparation of "Appendix IX."[63]

Matthews' article, of course, answered the question posed by its title in the negative, and listed sixty-six persons active in films who were allegedly associated with the Communist movement, the studios in which they worked, and their current productions. The article also suggested that the Legion would be satisfied with a house cleaning only when certain studio employees were fired.[64]

Of those movie personalities designated by Matthews, seventeen were named exclusively for their appearance on the (aforementioned) *amicus curiae* brief in the so-called Hollywood Ten (contempt) case. Others were selected solely as signatories to the protest ads during the 1947 hearings. Still others were described as "affiliated" with, or "supporting" Communist fronts, although the nature and degree of such alleged "affiliation" or "support" was not specified.[65]

In any event, the point was not lost upon the top leaders of the movie industry, and they met with Legion representatives the following March.

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[61] *Id.*, p. 119.
[62] *Id.*
[63] *Id.*, p. 121.
[64] *Id.*, pp. 119, 123, 124.
[65] *Id.*, p. 124.

At the Conferenee, the Legionnaires explained that while they appreciated the industry's plight, the Legion would not "call off its dogs" until the industry made earnest efforts to "clear up the situation."[66]

Spyros Skouras, head of 20th Century-Fox, argued that his studio had already consulted with George Sokolsky; was in the process of collecting information relating to its employees, and was inviting the latter to prove their innocence by "written, signed explanations or denials." A Colum. Pictures executive advised the Legionnaires that his studio had undertaken a similar program "for almost a year". RKO representatives insisted that they had already compiled information "on employees who might find themselves in difficulties".[67]

A compromise was reached when the movie executives accepted the Legionnaire proposal to compare notes "in the hope of confining the Legion's criticism to personnel whose studios could find no factual defense for them".[68] Accordingly, within the next few days, an informal list of 300 names was sent to the studios with directions to "check this material for any factual errors and make such reports to us as you deem proper".[69]

Every studio employee on the Legion list was instructed to write a letter disavowing or explaining the Legion's citations. Those who refused were summarily discharged, or at least not rehired.[70]

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[66] *Id.*, pp. 124-125.

[67] *Id.*, p. 125.

[68] *Id.*

[69] *Id.*, pp. 125-126.

[70] *Id.*, pp. 126-127.

> "Others who were not employed by any studio at the time the Legion list first appeared discovered that they had become unacceptable at the casting offices. In some cases this knowledge was gained only after months of mysterious and nerve-racking unemployment."[71]

The task of adjudging the acceptability of the letters of explanation fell to George E. Sokolsky, a nationally-known newspaper columnist. It is reported that Sokolsky had at his command the complete compendium of research into the field of "Communist infiltration" compiled by his friend, J. B. Matthews; and he is alleged to have once told a radio-television sponsor that "since the 'file' at his disposal contained several million names, it is only a matter of a telephone call and a twenty-minute wait before anyone in show business can be thoroughly 'checked' ".[72]

While he denies responsibility for an individual's blacklisting, Sokolsky accepts credit for assisting in their re-employment.[73] Letters of explanation turned into studio front offices were forwarded to the Legion. Those not "patently satisfactory" were passed on to Sokolsky whose "grim duty" it then became to determine the "trustworthiness" of the writer. Those cases where there remained some doubt were referred to Brewer and Ward Bond (a movie actor).[74]

Since the several rehabilitation programs were designed to satisfy such groups as the Motion Picture Alliance (MPA), it was only natural that its more active mem-

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[71] *Id.*, p. 127.
[72] *Id.*, p. 129.
[73] *Id.* p. 130.
[74] *Id.*, p. 131.

bers be also called upon to sit in judgment. Thus, such persons as Ward Bond (an actor), Borden Chase and Martin Berkeley (writers), were called upon to determine the "employability" of their competitors.[75]

C.

Ordeal by Letter.

"Letters of explanation" by actors designated by the Legion became a condition precedent to further employment, irrespective of the triviality or remoteness of the association, or how honorable his motives. Furthermore, letter writing developed as a science in that the letter was unacceptable unless it followed a specific form, that is:

> "If an employee belonged to an organization later identified as a Communist-front group, his 'letter' had to include statements that he had not known the organization was a front, had clearly been 'duped', and as a loyal American citizen violently opposed Communism. Letters which did not include such statements were returned with the request that the signer try again."[76]

For example, one actor was charged with membership in an organization which sponsored one of the protest ads during the 1947 hearings, and with having "endorsed" the unfriendly witnesses who appeared before the House Committee. His first letter was an highly indignant denial of membership in the Communist Party, with a blunt declaration that he was available at any time to answer—to the proper authorities—"any questions regarding past associations and activities." The letter was returned as

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[75] *Id.* p. 107

[76] *Id.* p. 144.

unsatisfactory, together with a copy of the studio's report on him. The actor's second letter, more pacific in tone, adopted the proper formula, and was accepted.[77]

The technique demanded was a convincing demonstration of awareness of error and repentance. In 1952, a "prominent dramatist and scriptwriter" was accused of questionable past activities which required an explanation to Roy Brewer. The writer discussed the charges, and added a history of his anti-Communist activities and sentiments as well. The letter was returned as unsatisfactory because "it did not accomplish the purpose for which it had been written."

A second letter, seventeen single-spaced pages in length, was then forwarded to Brewer, and it too was rejected as not repentant or humble enough, and was even occasionally defensive.

The writer tried once again, this time utilizing the correct techniques. Yet, the changes and deletions failed to satisfy Brewer. The writer then filed a sixty-four page document with the F.B.I. covering his political activities and advocacies, and relating how his work had been received in the nation's press. He remained unemployed in Hollywood.

For three years there were conferences and luncheon meetings between studio officials, the screenwriter's attorney, and, sometimes the writer, all looking to a way of meeting Brewer's terms; on two occasions the film writer even met with Brewer to discuss the problem. But he was unable to give what Brewer wanted. "And [the writer] did not work in films again until 1955".[78]

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[77] *Id.* pp. 144-145.

[78] *Id.* pp. 146-149. Brewer left Hollywood early in 1955 (*cf.* p. 47).

D.

The "Punishment."

Those strong enough and courageous enough to resist the pressures exerted upon them by blacklisting must look elsewhere for their employment. Yet, the troubles of listees unable to obtain "clearance" are not over even though they are no longer in the industry. One blacklisted radio writer was about to enter into business with a Los Angeles baker. But, when the latter discovered that the writer had been an uncooperative witness before the House Committee, the deal fell through.[79] Cogley reports:

> "Most blacklisted persons interviewed were reluctant to say how they are making their living at present. Some have received phone calls from unknown persons who use various subterfuges to find out where they are working. Many believe that their telephones are tapped. Even those engaged in day labor are reluctant to say where they are employed for fear they will be dropped from their unions if it is discovered that they 'took the Fifth'."[80]

Occasionally, however, a blacklisting case contains touches of de Maupassant. Paramount studios had purchased for $75,000 an option on the hit Broadway musical "Guys and Dolls" co-written and co-owned by Abe Burrows. MPA, however, was dissatisfied with Burrow's testimony before the House Committee, and Paramount executives decided to drop their option.

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[79] *Id.* p. 171

[80] *Id.* p. 171

But Burrows managed to obtain a "clearance" from George Sokolsky and this paved the way for Samuel Goldwyn to purchase the movie rights to the show. An embarrassed MPA attacked Goldwyn in its publication, and served notice that it would publicize the whole affair. But the picture was made, released and successful.[81]

The most tragic consequence of blacklisting, however, is that which touches the family home. After Jean Muir had been signed by a television company to portray Mother Aldrich in "The Aldrich Family" it was discovered that her name appeared in "Red Channels". The studio immediately bought up her contract, and she was dismissed. The "Jean Muir affair" attracted an unusual amount of national attention—so much so that a few days later, one of her sons "ran home from school screaming. As he rushed into her arms, he asked a question which had been the chief topic of discussion at his school:

> "'Mummy,' he shouted, 'is it true you're a Communist?'"[82]

And next to the awful personal effects of blacklisting is the ominous portent of a nation robbed of its future.

In 1952, when Judy Holliday appeared before a Senate Internal Security Subcommittee, she admitted that she had been "duped" into supporting Communist front organizations. "Senator Watkins asked her: 'You watch it now; do you not?'" to which she replied, significantly, "Ho, *do* I watch it now!"[83]

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[81] *Id.*, pp. 168-169.
[82] Miller Report, pp. 30-44, at p. 44.
[83] Cogley Report, p. 116.

Conclusion.

For the foregoing reasons, *amicus* respectfully submits that the petition for certiorari should be granted.

Respectfully submitted,

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